

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: ) Chapter 11  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. ) Hon. Basil H. Lorch III

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT  
WITH CHAD BAKER PURSUANT TO RULE 9019**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as chapter 11 trustee (the "Trustee") for the estate of Eastern Livestock Co., LLC (the "Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Chad Baker ("Baker") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit A (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. Based on his investigation, the Trustee concluded that Baker owes the Debtor \$82,587.78 on account of the Debtor's prepetition delivery of cattle to Baker and evidenced by the Debtor's invoice numbers 316120, 316526, 248332, 304785, 295974, and 314939 (the "Unpaid Invoices").

4. By letter dated December 3, 2010, Baker purported to reject certain of the cattle delivered by the Debtor to Baker due to their allegedly defective condition (the "Rejected Cattle"). Baker has agreed to pay, and the Trustee has agreed to accept \$57,818.00 (the "Settlement Amount") in settlement of the Unpaid Invoices, which amount represents the total of the Unpaid Invoices less the value of the Rejected Cattle.

5. The Trustee and Baker, in an effort to avoid the significant cost and expense of litigation, desire to settle their disputes upon the terms and conditions set forth in the Settlement Agreement.

### **The Settlement**

6. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Baker pursuant to the terms and conditions set forth in the Settlement Agreement.

7. As set forth in detail in the Settlement Agreement, Baker agrees to:

- a. Pay the Trustee the sum of \$3,900 within five (5) business days of the Effective Date<sup>1</sup> of the Settlement Agreement.
- b. Pay the Trustee the sum of \$3,900 (each, a "Monthly Payment") on the 15<sup>th</sup> day of each calendar month commencing on the calendar month

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Settlement Agreement.

after the calendar month in which the Effective Date occurs.

- c. Pay the unpaid balance of the Settlement Amount in full on or before March 15, 2015.
- d. Execute an agreed judgment against Baker in the amount of \$57,818.00 substantially in the form of Exhibit A to the Settlement Agreement, which document will be held by counsel for the Trustee and will not be filed with the Court or recorded in any county unless and until Baker fails to pay (i) a Monthly Payment as and when due, or (ii) the unpaid balance of the Settlement Amount in full on or before March 15, 2015.
- e. Waive any and all claims and withdraw all claims filed in the Chapter 11 Case.

**Basis for Relief**

8. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

*In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d at 426 (citations omitted).

9. Although the Trustee believes there is legal and factual support for his claims against Baker, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor’s estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the

expenses the Debtor's estate would incur in litigating the claim, (ii) the probability of success in prosecuting the claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

10. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

11. Notice of this Settlement Motion will be provided to all creditors, the United States Trustee, all counsel of record, and any other entity that the Court may direct, as provided in Bankruptcy Rules 2002 and 9019.

WHEREFORE, if no objections to this Settlement Motion are filed, the Parties request that the Court enter the Settlement Order approving the Settlement Agreement. A proposed form of order is attached as Exhibit B. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court. The Trustee requests that any notice of this motion include language that any objection to this Settlement Motion set forth with specificity any claim that the objecting party has to the Settlement Amount.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on February 24, 2014, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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/s/ Kayla D. Britton